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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,964	04/23/2008	Frederic Santens	DECL118.001APC	2260
20995 7590 11/26/2008 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			EXAMINER MUROMOTO JR, ROBERT H	
			ART UNIT 3765	PAPER NUMBER
			NOTIFICATION DATE 11/26/2008	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/584,964	SANTENS, FREDERIC	
	Examiner	Art Unit	
	BOBBY H. MUROMOTO JR	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 31-53 is/are rejected.
- 7) ☒ Claim(s) 50-53 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/30/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Information Disclosure Statement

The information disclosure statement filed 6/30/2006 fails to comply with 37 CFR 1.98(a)(2), which requires **a legible copy of each cited foreign patent document;** each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Specification

The abstract of the disclosure is objected to because the recitations “is disclosed” and “is also disclosed” are not proper language for US patent abstract practice. Correction is required. See MPEP § 608.01(b).

Claim Objections

Claims 50-53 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claim 50 is not proper in the actually claimed recitations should appear in the claim not a reference to a table.

Claim 51 is improperly drafted as a dependent claim. For this examination the claim is treated as a de-facto independent claim including all the limitations of the intervening claims.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 50 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitations do not clearly indicate what is being claimed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 31-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sherrill, et al., US 3721273.

Sherrill discloses, "The ground warp yarns 10 and ground weft yarns 11 forming the base of the fabric should be formed of staple fibers other than rayon and **preferably are formed from cotton fibers or blends thereof**. The size of the various ground warp yarns 10, ground weft yarns 11, rayon lerry yarns 12 and cotton lerry yarns 13, as well

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as the density of the weave, may be in accordance with conventional practice...(col. 4, line 27-33)."

"Categorically, "rayon yarns" as referred to in this application is used in its normal sense to mean those yarns formed from rayon fibers of ***regenerated cellulose***. (col. 2, line 15-20)"

Rayon yarns as used in '273 are equivalent to regenerated cellulose and since applicant has recited in the specification that regenerated cellulose is equivalent to bamboo fibers it follows that the term 'rayon yarns' is also the equivalent to bamboo fiber yarns as in the instant application.

The fabric in figure 3 is a 3-pick terry fabric (three-weft technique).

Figure 3 shows sheared, regenerated cellulose terry loops, formed from warp yarns, as claimed.

'273 clearly discloses, ground warp, a looped warp and a ground weft, made from "simple or twined yarns" as claimed.

'273 clearly discloses cotton as the ground warp and weft, rayon or regenerated cellulose as one of the looped piles, as claimed.

'273 clearly discloses sheared looped warp as claimed.

'273 clearly discloses a terry fabric with the selvages or borders including rayon or regenerated cellulose fiber. "Optionally" recitations are optional, i.e. not required.

Although various claims recite "consists" or closed claim format, independent claim 31 recites "consisting essentially of" or open format. The "consists of" language does not override the previously recited open claim format.

Although '273 discloses all of the limitations above, '273 does not specifically recite fabric weight, warp density, weft density, pile density on each or both sides of the fabric, pile formed from weft yarns, bamboo or regenerated cellulose on both sides of the fabric, bamboo mixed or blended with other fibers, bamboo or regenerated cellulose as a ground warp, pile length/height, weight of bamboo or regenerated cellulose loops in the fabric, yarn count, and towel border length.

However with regards to fabric weight, warp density, weft density, pile density on each or both sides of the fabric, pile length/height, weight of bamboo or regenerated cellulose loops in the fabric, yarn count, and towel border length.

The MPEP states, "Changes in Size/Proportion

In re Rose, 220 F.2d 459, 105 USPQ 237 (CCPA 1955) (Claims directed to a lumber package "of appreciable size and weight requiring handling by a lift truck" where held unpatentable over prior art lumber packages which could be lifted by hand because limitations relating to the size of the package were not sufficient to patentably distinguish over the prior art.); *In re Rinehart*, 531 F.2d 1048, 189 USPQ 143 (CCPA 1976) ("mere scaling up of a prior art process capable of being scaled up, if such were the case, would not establish patentability in a claim to an old process so scaled." 531 F.2d at 1053, 189 USPQ at 148.).

In *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

Therefore it would have been obvious to one of ordinary skill in the art of towel production to vary these fabric dimensions and measure resultant fabric parameters as the only difference between the prior art and the instant invention are the claimed

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relative dimensions and measured resultant fabric parameters, and that both the prior art and instant fabric both attempt to create towels with increased absorption, feel, and color fastness.

With respect to pile formed from weft yarns the instant Background of invention states it is common practice and therefore obvious to one of ordinary skill in towel production to use either the warp or weft as the pile forming yarn as claimed.

With respect to regenerated cellulose on both sides of the fabric or as the ground warp, '273 discloses that, rayon staple fibers are even more moisture absorbent than cotton fibers, therefore it would have been obvious to use regenerated cellulose on both sides as it has been found to be even more absorbent than cotton fibers.

With respect to the blending of regenerated cellulose fibers/yarns, '273 teaches, "For many years, most terry towels have been woven with the terry pile surfaces thereof being entirely of cotton yarns, and in recent years, some towels have contained terry yarns formed of blends of cotton and rayon." Therefore as commonly practiced in the art of towel production, it would have been obvious to use rayon or regenerated cellulose yarns that are blended as this is known and taught as common practice in towel production.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BOBBY H. MUROMOTO JR whose telephone number is (571)272-4991. The examiner can normally be reached on 8-530, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert H Muromoto, Jr./
Primary Examiner, Art Unit 3765